

**MINUTES
of the
SECOND MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
SUBCOMMITTEE ON REQUEST FOR PROPOSALS PROCUREMENT**

**November 10, 2011
Room 322, State Capitol
Santa Fe**

The second meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) Subcommittee on Request for Proposals (RFP) Procurement was called to order by Representative Rick Miera, chair, on November 10, 2011 at 9:15 a.m. in Room 322, State Capitol.

Present

Rep. Rick Miera, Co-Chair, PSCOOTF
Andy Bensen, Director of Business Development, Van H. Gilbert Architect, PC
Lemoyne Blackshear, Staff Architect, Property Control Division, General Services Department (GSD)
Sean Calvert, Esq., Calvert Menicucci, PC
Lisa Cooley
Steve Crispin
Dr. Carl Foster, PSCOOTF Public Member
Jason Harrington, President and CEO, HB Construction
Shad S. James, Executive Vice President, Jaynes Corporation Albuquerque Operations
Rep. Larry A. Larrañaga, PSCOOTF Member
Dave McCoy, Executive Director, Sheet Metal and Air Conditioning Contractors' National Association
Aaron McKinney, Superintendent, Tucumcari Public School District
Patricia Miller, Superintendent, Fort Sumner Municipal School District
Kirk McWethy, Shumate Construction

Staff

Sharon Ball, Senior Researcher, Legislative Council Service (LCS)
Leslie Porter, Research Assistant, LCS
Robert Gorrell, Director, Public Schools Facilities Authority (PSFA)
Tim Berry, Deputy Director, PSFA
Dotty McKinney, Contracts Administrator, PSFA
Martica Casias, Planning and Design manager, PSFA
Ovidiu Viorica, Construction Manager, PSFA

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Thursday, November 10

Welcome and Introductions

Representative Miera welcomed the subcommittee members and invited LCS staff members and subcommittee members to introduce themselves.

Approval of Minutes

Upon a motion made by Representative Larrañaga, seconded by Dr. Foster, and with none opposed, the minutes from the previous meeting were approved.

Recap of Direction to Staff from October 17 Meeting

Ms. Ball informed the subcommittee that consensus needs to be reached on recommendations from the PSFA that will be discussed.

Update on BidSync

Jeffrey S. Nayer, regional sales director, BidSync, offered a brief background on BidSync, explaining that BidSync is a private company, founded in 1999, and is one of the fastest-growing companies in the United States. He said the company offers a transparent, web-based and automated purchasing program. He said the automatic purchasing simplifies the process, is "green" (i.e., environmentally friendly), reduces order times by 50 percent, accelerates the workflow by 10 times and offers a rapid roll-out. Concerning data security, Mr. Nayer said the program complies with federal government security and has the same encryption that is used by national banks. He added that the bids are sealed. Regarding the cost of the program, he said \$45,000 a year includes unlimited customer and vendor support and a three-year contract, and he mentioned a one-time charge of \$9,000. He said customizations to the program can be done within 24 hours and are done with no additional charge. Mr. Nayer said that BidSync has received more than 16,000 solicitations within the past 12 months and currently has 472 clients in 20 states.

Representative Miera clarified that the subcommittee is not responsible for making a decision regarding doing business with BidSync.

In response to an inquiry, Mr. Nayer said vendors using the program can register within a certain region to access solicitations from state agencies that use the program from that region. He said online training is provided to customers and can also be done on a "train-the-trainer" approach to allow individuals in rural New Mexico without internet access to learn the program. Mr. Nayer stated that the training and customer service is available Monday through Friday from 6:00 a.m. to 6:00 p.m. Some concern was raised by a subcommittee member that training is not available 24 hours a day, seven days a week.

Discussion ensued regarding the cost of the program beyond the pilot. Mr. Gorrell said that school districts have expressed willingness to aid in the purchasing of the project.

Further discussion took place about the specifics of the program. Mr. Nayer said that the program allows the same process as the paper process, simply in electronic form. He said the program can be tailored for specific agencies.

Subcommittee members brought up the topic of whether or not the rights have been issued to allow e-bidding, and whether or not the rules as written exclude it. Ms. Blackshear said she will take this concern to the GSD. Ms. Ball added that this is an issue of establishing a rule allowing e-bidding.

Staff Response to Issues and Concerns

Mr. Berry offered a summary of qualifications-based procurement recommendations.

The *"Web-Based RFP for Construction Procurement System"* was discussed first. Mr. Berry said the system is allowed via statute and will improve recordkeeping, transparency and accountability. He said the PSFA has entered into an agreement with BidSync to pilot a construction project for the Clovis Municipal School District. He said the PSFA recommends a PSFA guideline to fully implement this system, as opposed to a rule or law change.

"Weighting and Scoring" within the RFP for the construction process was the second issue. Mr. Berry explained that points given to the price component should not be so great that qualifications become inconsequential. The purpose of the RFP for construction is to obtain the "best value", and that may not be the bid with the lowest price. He added that the weighting of the technical proposal must be sufficient to ensure quality and that highly skilled contractors and subcontractors will perform the work. The PSFA recommended:

1. creating a sliding scale for allocation of points for technical proposal and price, based on the size and complexity of the school project within rule limitations;
2. allocating a minimum of 50 percent of available points to the price component without a change to the rule; and
3. changing NMAC 1.4.8.15 A (4) *Health and Safety* to a yes/no requirement to increase availability of points for "additional evaluation factors" that would eliminate the duplication of safety requirements.

"Interviews Versus Discussion, Scoring of Interviews, 'Local' Preference" was the third topic. Offering background on the issue, Ms. McKinney said interviews are currently held and scored in an inconsistent manner, but neither NMAC 1.4.1 nor NMAC 1.4.8 specifies that this is allowed. She said this score may alter the outcome and these points may reduce the significance of points applied to the price. The PSFA recommended:

1. directing the PSFA to add clarifying language to the PSFA RFP for construction template regarding the conduct of "interviews" in relation to the Educational Facility Construction Manager At Risk Act and "proposal discussions" per NMAC 1.4.8 per reference to NMAC 1.4.1;
2. allocating points to discussions in lieu of changing technical proposal scores to determine a winner, if discussions are held; and
3. adding clarifying language to the RFP for construction template indicating that a short-listed offeror has the right to decline discussions if it is apparent that the offeror cannot overcome its current ranking.

"Qualifications of Potential Committee Members and Access" was the fourth issue. Mr. Berry explained that evaluation committee members may not have a construction background;

design professionals are not consistently asked to advise the committee; and firms may be marketing to districts applying for or that have received Public School Capital Outlay Council funds. The PSFA recommended:

1. naming a design professional to serve on the selection committee in an advisory capacity;
2. requesting approval of the list of proposed evaluation committee members that includes a description of their construction experience and capabilities;
3. creating a pool of qualified evaluators to be drawn from districts that do not have access to experienced construction personnel;
4. requiring potential evaluation committee members to submit a conflict of interest form, a campaign contribution form and a confidentiality form to alleviate outside influence of the evaluation;
5. disqualifying any potential offerors that market their firm or offer gifts or lunches prior to or during the procurement process and adding language to the contract to prevent gifts or lunches after the procurement process;
6. requiring the PSFA approval of points applied to the technical and price components and if applicable, proposal discussions per type and complexity of project;
7. developing an online, mandatory RFP for construction class for the procurement manager and the potential evaluation committee;
8. providing a certificate of completion for the RFP for construction call;
9. developing an online informative presentation for potential contractors and/or subcontractors new to the RFP for construction process; and
10. per statute, adding language to the RFP procurement templates clarifying that all or part of the RFP may be submitted on recordable media in PDF format in lieu of hard copies.

The fifth point is ***"Subcontractors Qualification and Local-Local Preference Logistics"***. Mr. Berry said that New Mexico preference benefits in-state, and not local jurisdiction, businesses and said that adding a "local-local" preference may cause problems since the evaluation committee would have to separate a trade and bid from the RFP and project. The PSFA recommended assigning points to RFP evaluation criteria under the "added value" factor to contractors proposing to hire locally for self-performed work or subcontracting.

"Best and Final Offer" was the sixth point discussed. Ms. McKinney informed the subcommittee that some jurisdictions are using this to put short-listed offerors in a price bid shopping scenario. The PSFA recommends clarifying the use of "best and final offer" in relation to NMAC 1.4.8 and remove the reference in NMAC 1.4.8 to NMAC 1.4.1 regarding the use of this.

The seventh issue discussed was the ***"Protest Period"***. Ms. McKinney said confusion exists as to when the protest period begins in relation to the award cycle of the project. She said the PSFA recommended that it be given direction to add clarifying language to the RFP for construction template regarding the prevailing statute and regulations and to provide training to procurement managers regarding the process.

Questions and Discussion

Mr. Harrington summarized his proposal for resolving the best value and low price concern. He said both the technical and price proposals would be submitted simultaneously. He said the technical proposal would be presented in a format similar to what contractors are currently required to provide. He said the PSFA and the school districts reserve the right to conduct interviews with the top four scoring contractors to confirm that the contractors are the most highly qualified firms prior to opening the price proposals. He said that after the qualifications and interview are scored by an evaluation committee, the scores are zeroed out and the next step begins with the opening of a price proposal from the top four scoring contractors. He stated the winning contractor is the one with the lowest price. He said this method addresses the following issues:

1. the PSFA and the school district will still have the advantage of working with a highly qualified contractor while providing security of the taxpayer's and owner's interest;
2. members of the evaluation committee are disconnected from the actual award of the contract and are prevented from being exposed to improper benefits;
3. evaluation committee concerns, such as qualifying or qualification of members, strict oversight and criticism of the committee, are reduced since the committee is not responsible for awarding the project to one contractor, but is responsible for selecting which contractors are the most qualified; and
4. the method eliminates bid shopping.

Concern was voiced regarding the reduction in the safety component in the RFP for construction process, as proposed by the PSFA. Statements were made that a recommendation to change the safety component to issue the full 20 points is not sufficient. Subcommittee members said construction is a very dangerous activity and that keeping the health and safety point allocation at 20 percent is critical. Members said that differences in contractors' safety programs exist, as evidenced via site visits. In addition, a history of a safe work environment is crucial and is as important as experience, members emphasized. Mr. Berry clarified that the PSFA is not attempting to diminish the importance of safety, but it is attempting to eliminate duplicity. Further discussion ensued between subcommittee members and the PSFA. Concerning this issue, the qualification of evaluation committee members was brought forth once again. A subcommittee member suggested removing the health and safety component from the NMAC 1.4.8.15 A (1) (2) *Past Performance Plan and Management*, resulting in all safety points being in NMAC 1.4.8.15 A (4) *Health and Safety* and leaving points being available for past performance.

Subcommittee members reiterated that evaluation committee training should be implemented to ensure that committee members are adequately qualified. Mr. Gorrell noted that "one size does not fit all" as far as this issue is concerned. He said the PSFA thinks this could be vetted through industry and owner standards.

Discussion ensued regarding the "best and final offer". Responding to an inquiry, Mr. Gorrell said that the best and final offer is allowed, and that the use of it at the end of the process is not announced by the owner of a project in the beginning of the process. He said PSFA staff recommend that it be eliminated altogether. Various subcommittee members opposed this recommendation, explaining that the state has used the best and final offer with construction, has

laid it out in the beginning of the project, that it has been useful in certain situations and that it should remain in place. Other subcommittee members advocated its elimination in this process.

A few subcommittee members discussed the "local-local" preference, saying it would hurt small contractors outside of Albuquerque, for many travel to Albuquerque to bid.

Members of the subcommittee agreed with the intent of the language change concerning gifts from contractors to project owners, but said the language should exclude "marketing your firm", for kickbacks are the problem.

Consideration of Recommendations to the PSCOOTF

Subcommittee members determined consensus on the PSFA recommendations.

"Web-Based RFP for Construction Procurement System"

Representative Miera told the subcommittee that staff will research the need for a rule change or a rule addition. There being no objection from subcommittee members, he said this issue will be taken to the PSCOOTF.

"Weighting and Scoring"

There being no opposition from the subcommittee, Representative Miera said the recommendations will be brought forth to the PSCOOTF. Mr. Berry clarified that points should be no less than 50 percent of the points. Mr. Gorrell said the PSFA will use the solution suggested by the subcommittee and leave it in NMAC 1.4.8.15 A (4) *Health and Safety*.

"Interviews Versus Discussions, Scoring of Interviews, 'Local-Local' Preference"

Based upon a subcommittee consensus, the recommendations for all three will be brought forth to the PSCOOTF.

"Qualifications of Potential Committee Members and Access"

Consensus was reached that the architect should serve in an advisory capacity on the evaluation committee and the recommendation will be brought to the PSCOOTF.

Based upon subcommittee consensus, the proposed PSFA guideline change and recommendations will be heard by the PSCOOTF.

"Subcontractors Qualification and Local Preference Logistics"

Based upon subcommittee consensus, the proposed PSFA guideline change and recommendation will be heard by the PSCOOTF.

"Best and Final Offer"

Representative Larrañaga made a motion to have the PSCOOTF look at this issue, and with Dr. Foster in opposition, the issue will be examined by the PSCOOTF.

"Protest Period"

Upon a motion made by Ms. Miller, seconded by Representative Larrañaga, and with none opposed, the proposed PSFA guideline change will be heard by the PSCOOTF; however, the

issue, as it will be forwarded, will only change and not add limitations to the construction template as to protest time. The issue of training will be advanced to the PSCOOTF.

Adjournment

There being no further business before the subcommittee, the meeting adjourned at 12:30 p.m.